You will remember the boatman's evidence that, he said, he never changed his story, nor did anyone ever ask him to do so. And so with that comment, gentlemen of the jury, you will dismiss that incident from your mind entirely."

In our opinion, having regard to the passage which has just been read, this ground of appeal fails.

It was contended by counsel for the appellant that his client was throughout the trial subject to such prejudice that he could not in the circumstances be said to have had a fair trial. Counsel for the appellant also submitted that the learned trial judge in his summing-up was so biased against the appellant that the appellant could not be said to have had a fair trial. Of the numerous examples of so-called bias which were brought to our attention it must be said that a good number were quite trivial. In one instance, however, it is clear that the learned trial judge was in error when he stated in his summing-up that both the appellant and the witness Henderson used an improvised washer during demonstrations in court. In fact it was Henderson who used the improvised washer while the appellant used a new "Healthway" washer in the course of another demonstration. In our view, this was a slip, of no great consequence, made in the course of a lengthy trial and is no indication of bias on the part of the learned trial judge.

It is true that the learned trial judge expressed himself with great emphasis and in strong terms on various matters. But the jury were left in no doubt that they were the sole judges of the facts in the case. This is what the learned trial judge said in his summing-up to the jury:—

"The facts of the case, on the other hand, are your responsibility. You are the sole judges of the facts in this case. If, during the course of this summing-up, I express or appear to express my own opinions on the facts, while you will of course consider them, if upon consideration you find yourselves unable to agree with them, then it is your bounden duty to disregard what I say. You and you alone are the ultimate judges of the facts. Your duty is to find what the facts are from the evidence which has been called and presented to you from the witness box. Then you apply to those facts the law as I have directed you."

It may be said that this direction was given at an early stage of the summing-up. However, the jury were reminded repeatedly throughout the summing-up that matters of fact were for them to decide. In our view, there is no real substance in these two grounds of appeal.

It was also contended that the learned trial judge erred in law in failing adequately to direct the jury on the danger of convicting an accused person upon circumstantial evidence. There are two passages in the summing-up which are relevant in this connection. The first passage, which comes after the direction in which the learned trial judge deals with what he refers to as the first question of the cumulative effect of circumstantial evidence, is as follows:—

"The second question to which I must draw your attention is that the question in this case, depending as it does on circumstantial evidence, is whether the cumulative effect of all the evidence leads you to the irresistible conclusion that it was the accused who committed this crime. Or is there some reasonably possible explanation such, for example — 'Was it an accident?'."

The second passage is as follows:—

"Now, as I told you earlier on, one of the points about circumstantial evidence is its cumulative effect. Any one of these points taken alone might, you may think, be capable of explanation. The question for you is: where does the totality of them, the total effect of them, all lead you to? Adding them together, considering them, not merely each one in itself, but altogether, does it or does it not lead you to the irresistible inference and conclusion that the accused committed this crime? Or is there some other reasonably possible explanation of those facts?

The prosecution case is that the effect of all this evidence drives you inevitably and inexorably to the one conclusion and one conclusion only: that it was the accused who intentionally caused the death of this young girl."

In our opinion, these directions are perfectly adequate in a case where the prosecution are relying on circumstantial evidence.

There are other grounds of appeal on which the appellant relied and which were discussed during the argument before this court. In our opinion there is no substance in any of them.

Although Jenny's body has never been found, there is overwhelming evidence on the record that the appellant murdered her. In our judgment no miscarriage of justice has occurred in this case.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Braddell Bros.*

GOODLAND LTD. v. LIM BAN TOON

[O.C.J. (Chua J.) May 10, 1966]

[Singapore — Suit No. 214 of 1965]

Landlord and Tenant — Whether three or more joint owners can grant a tenancy to one of them — Purchase of land by tenant jointly with others — Subsequent sale of land — Surrender of tenancy by operation of law.

In this case the facts shortly were that the defendant who was the tenant of a piece of land included in a larger lot joined with other tenants to purchase the lot as tenants in common. Subsequently the defendant and the other purchasers agreed to sell the land to a company, which was to develop the land. The consideration for the sale was the allotment of shares in the company and the land was stated to be sold subject to the existing tenancies. The company was later wound up and the land was sold and conveyed to the plaintiffs. The plaintiffs sought a declaration that the defendant's right to the land had been determined. The defendant claimed that he was a tenant of the land and that his tenancy had not been terminated.

Held: (1) at common law joint owners cannot grant a tenancy to one of them and therefore as the defendant and the other purchasers could not grant a tenancy to the defendant it followed that the defendant ceased to be a tenant when he and the other purchasers bought the property;

(2) there had been a surrender of the tenancy by operation of law, as it was clear that the intention was that the tenant-purchasers were to occupy their respective lots as co-owners;

(3) in the circumstances the defendant was not a tenant of the premises and the plaintiffs were entitled to the declaration that the defendant's right had been determined.

Cases referred to:—

(1) *Chew Khan* v. *Lim Weng Yoon & Anor.* [1965] 2 M.L.J. 136.

(2) *Rye* v. *Rye* [1962] 1 All E.R. 146.

CIVIL SUIT.

Dennis Lee for the plaintiffs.

K. E. Hilborne for the defendant.

Cur. Adv. Vult.

Chua J.: The plaintiffs' main claim in this case is for:

(1) A declaration that the defendant's right to use the plaintiffs' land and premises known as No. 390-T Paya Lebar Road, Singapore (hereinafter referred to as the premises) has been determined.

(2) An injunction to restrain the defendant by himself his members of the family servants or agents from entering and occupying the said premises.

The following facts are not in dispute:

(1) The house known as No. 390-T Paya Lebar Road stands on part of land comprised in Lot 36-10 of Mukim XXIII which contains an area of 33 acres (hereinafter referred to as "the said land".) The said house was erected in 1928 by Lim Cheng Liew, the father of the defendant, and he paid ground rent to the estate of Lim Tay Yam deceased, the owner of the said land.

(2) Lim Cheng Liew lived in the said house with his family. The defendant has been living there since he came from China 38 years ago.

(3) Lim Cheng Liew died in March, 1949, and the defendant continued to pay the ground rent.

(4) In November, 1950, the defendant and thirty-nine other persons (who I will hereafter refer to as "the other purchasers"), some of whom like the defendant were living on the said land and paying ground rent (who I will hereafter refer to as "tenant-purchasers"), purchased the said land from the sons of Lim Tay Yam for the sum of $87,538.75. The conveyance was executed on the 16th November, 1950, by which the vendors conveyed the said land to the purchasers "to hold the same unto the purchasers in fee simple as tenants in common", the defendant taking one undivided equal hundredth share in the said land. The defendant paid $1,000 for his share.

(5) Since November, 1950, the defendant and the other tenant-purchasers did not pay any more ground rent but from 1958 ground rent was collected from the other people living on the said land who were not tenant-purchasers.

(6) Five of the purchasers of the said land formed the Century Estate Ltd. which was incorporated on the 25th February, 1961. One of the objects of the company was to develop land.

(7) By an undated agreement made in 1961 the defendant and the other purchasers agreed to sell the said land to Century Estate Ltd. for $300,000. The consideration for the sale was to be the allotment of shares in Century Estate Ltd. to the vendors in accordance with the respective shares held by the vendors in the said land. The said land was sold subject to existing tenancies.

(8) The said land was conveyed to Century Estate Ltd. by a conveyance dated the 29th March, 1962.

(9) On the 7th September, 1963, by a special resolution passed at an extraordinary general meeting it was resolved that Century Estate Ltd. be wound up voluntarily and liquidators were appointed.

(10) In December, 1963, Century Estate Ltd. agreed to sell the said land to Keck Seng & Co. Ltd. for the sum of $1,484,530.24. The sale was subject "to existing tenancies and such occupation rights as may exist and the purchaser shall be deemed to have full knowledge thereof."

(11) On the 29th February, 1964, the said land was conveyed to the plaintiffs, the nominee of Keck Seng & Co. Ltd.

(12) The defendant received about $14,000 as his share from the sale of the said land.

Ang Thiam Teen, one of the purchasers of the said land in November, 1950, was called by the plaintiffs and his evidence was to the effect that after the purchase of the said land there was a meeting of the tenant-purchasers and it was agreed that they need not pay any more ground rent. The defendant, however, said that he knew nothing about this meeting and that he wanted to pay the ground rent but no one came to collect it. He further went on to say that he was the person who collected ground rent from those who were not tenant-purchasers on behalf of the owners of the said land and explained that he did not pay ground rent as his name was not on the list. I think the probabilities are that there was a meeting which the defendant attended and it was agreed that the tenant-purchasers need not pay ground rent.

So much for the facts.

It is common ground that the premises No. 390-T is subject to the Control of Rent Ordinance. The main contention of the plaintiffs is that when the defendant and the other purchasers bought the said land the defendant ceased to be a tenant and became a licensee paying no rent. The defendant, on the other hand, contends that he is still a tenant.

The argument of the plaintiffs is shortly this. A person cannot at the same time be both landlord and tenant of the same premises. The defendant was one of the owners of the premises and it cannot be inferred that the defendant and the other purchasers had created a tenancy of premises No. 390-T with the defendant as the tenant as it is not legally possible for such a tenancy to be created. The case of *Chew Khan* v. *Lim Weng Yoon & Anor.*,[1] was cited in support of this submission. In that case the Federal Court held that under the English

common law applicable in the State of Perak a person cannot grant a valid tenancy to himself or to himself and another.

The argument of the defendant is shortly this. It is admitted that the plaintiff was a protected tenant before November, 1950, and until his tenancy is terminated he remains a tenant after November, 1950. There are only three ways in which the defendant can cease to be a tenant namely (1) by termination according to law of the tenancy either by the landlord or tenant giving notice to quit or (2) by surrender of the tenancy or (3) by merger of the landlord's interest with the tenant's interest. There has been no termination of his tenancy by anyone of these ways.

The main question for consideration, therefore, is, what happened to the tenancy of the defendant after the purchase by him and the other purchasers of the said land?

At English common law which is applicable in this State it is clearly impossible for a person to grant a tenancy to himself or for two persons to grant a tenancy to themselves. Lord Denning in the House of Lords case of *Rye* v. *Rye*,[2] said at p. 155:

"This makes it necessary to determine the point of law: Is it possible for a person to grant a tenancy to himself? or for two persons to grant a tenancy to themselves? At common law it was clearly impossible. *Nemo potest esse tenens et dominus.* A person cannot be, at the same time, both landlord and tenant of the same premises; for as soon as the tenancy and the reversion are in the same hands, the tenancy is merged, that is, sunk or drowned, in the reversion; see 2 *Blackstone's Commentaries* 177. Neither could a person at common law covenant with himself, nor could two persons with themselves. Neither could one person covenant with himself and others jointly. Such a covenant, said Pollock C.B., is 'senseless', see *Faulkner* v. *Lowe*."

The Conveyancing and Law of Property Ordinance (Cap. 243) has not altered the common law in this respect.

On the authority of *Chew Khan* v. *Lim Weng Yoon & Anor.* it is also clear that a person cannot grant a valid tenancy to himself and another.

To put it shortly, *A* the owner of property cannot grant a tenancy to *A* or to *A & B* and *A & B* the joint owners of property cannot grant a tenancy to *A & B*. But can *A, B & C* the joint owners of property grant a tenancy to *A?*

In *Rye* v. *Rye* all the Law Lords were unanimous in their view that at common law a person could not make himself his own tenant nor could two persons grant a tenancy to themselves and some of the Law Lords referred to the features that would prevent such a transaction from having the legal consequences that must result in order to create a valid tenancy.

Viscount Simonds in his judgment at p. 149 said:—

"In *Grey* v. *Ellison* ((1856), 1 Giff. at p. 444) Stuart V.C., describes as fanciful and whimsical transaction the proposal that a man should grant a lease to himself. He had, no doubt, in mind that a lease is in one aspect contractual. Of things necessary to a lease, says *Sheppard's* Touchstone of Common Assurances (see 7th Edn., Vol. II, p. 268) one is that there must be acceptance actual or presumed of the thing demised. Yet it is meaningless to say that a man accepts from himself something which is already his own. I recognise that a lease not only has a contractual basis between lessor and lessee, but operates also to vest an estate in the lessee. But what sort of estate is in these circumstances vested in the lessee? I will assume that it will not at once merge in the higher estate from which it springs, though I see no reason why it should not. Yet it must be an estate hitherto unknown to the law. Even a bare demise implies certain covenants at law: but to such an estate as this no covenants can be effectively attached. Nor can the common law remedy of distress operate to enable the lessor to distrain on his own goods. Again, at law in the absence of some special provision the lessee is entitled to exclusive possession of the demised premises. What meaning is to be attributed to this where the lessee is also the lessor? My Lords, my mind recoils against an interpretation of the Act which leads to so fanciful and whimsical a result and it appears to me to be quite unnecessary."

Lord Radcliffe, at page 154 said:—

"Down to the Act of 1925 I take it that it would have been said without qualification that a man cannot make himself his own tenant. The contractual relationship which was the almost inescapable concomitant of a tenancy would have been regarded as precluding such a transaction. Terms of years for securing such things as jointures or portions could, I suppose, be created without covenants but they were exceptional devices. There is nothing in the Act itself that removes this difficulty by making it possible for a man to enforce contractual obligations against himself."

Lord Denning, at page 155, said:—

"My Lords, I have come to the clear opinion that even under the Act of 1925, a person cannot grant a tenancy to himself: for the simple reason that every tenancy is based on an agreement between two persons and contains covenants expressed or implied by the one person with the other. Now if a man cannot agree with himself and cannot covenant with himself, I do not see how he can grant a tenancy to himself. Is the tenancy to be good and the covenants bad? I do not think so. The one transaction cannot be split up in that way. The tenancy must stand or fall with the agreement on which it is founded and with the covenants contained in it: and as they fall, so does the tenancy. And what about notice to quit? If A grants a tenancy to himself A, can he mutter a notice to quit to himself and expect the law to take any notice of it? or, if A and B grant a yearly tenancy to themselves A and B, can there be a notice to quit unless both agree? Of course not. So that, instead of a yearly tenancy, it becomes a life-long tenancy determinable only by the agreement of both, which is absurd. The truth is that they cannot grant a tenancy to themselves."

In my view the reasons given by the Law Lords in *Rye* v. *Rye* why *A* cannot grant a tenancy to *A* or *A & B* cannot grant a tenancy to *A & B* are equally applicable where three or more joint owners grant a tenancy to one of them, for precisely the same difficulties arise in regard to such matters as enforcement of implied covenants, the landlord's right to distrain, the tenant's right to exclusive possession as against

the landlord, the giving of notice to quit and the acceptance of the premises.

As the defendant and the other purchasers cannot grant a tenancy to the defendant it follows that the defendant ceased to be a tenant when he and the other purchasers bought the property in November, 1950.

There is another reason why I must hold that the defendant is not a tenant. In my view there has been a surrender of the tenancy by operation of law.

Ang Thiam Teen said in evidence, and I accept it, that when they bought the said land it was their intention to cut the land into lots so that each lot could be conveyed to the individual purchasers. This fact coupled with the fact that the tenant-purchasers agreed that none of them should pay ground rent any further showed that the intention of the tenant-purchasers was to occupy their respective lots as co-owners.

For these reasons I have come to the clear opinion that the defendant is not a tenant of the premises.

It is pleaded that the defendant become a tenant of Century Estate Ltd. upon the transfer of the said land to the company in return for shares therein and that the tenancy arose out of the undated agreement made in 1961. I need only say that there is no substance in this.

There will be judgment for the plaintiffs with costs and there will be a declaration and injunction as prayed for.

Declaration and injunction granted.

Solicitors: *Lee & Lee; Hilborne & Co.*

RAWTHER v. ABDUL KAREEM

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Suffian J.) May 9, 1966]

[K.L. — Federal Court Civil Appeal No. 26 of 1965]

Malicious prosecution — Onus of proof — Whether defendant set criminal law in motion — Reasonable and probable cause for allegations made by defendants — Appeal succeeding on points not presented in court below — Costs.

This was an appeal by the defendant in an action in which the respondent (plaintiff) successfully sued for damages for malicious prosecution ([1965] 2 M.L.J. 132). The facts were that there was a dispute relating to a limited liability company carrying on business in Kuala Lumpur. The respondent claimed to be a shareholder in the company but the appellant alleged that he was not. Affidavits were filed in winding-up proceedings by the appellant and the respondent. As a result, it appears, of an anonymous letter police investigations were conducted and the result was that the respondent was charged for making a false affidavit. He was acquitted at the trial and he subsequently brought the action for malicious prosecution against the appellant. The appellant did not appear at the trial and judgment was given against him.

Held: (1) in all the circumstances of the case and on the evidence as it stood, it was clearly impossible to hold that the appellant was responsible for the prosecution unless it was proved that whatever statements he made to the police were made without a belief in their truth for which he had reasonable and probable cause; and there was no evidence in this case to make out an absence of reasonable and probable cause on the part of the appellant that would call for rebuttal from him;

(2) in the circumstances as two of the necessary ingredients necessary to be proved for a successful action for malicious prosecution had not in fact been proved, the appeal must be allowed.

Cases referred to:—

(1) *Glinski* v. *McIver* [1962] A.C. 726, 741.

(2) *Bradshaw* v. *Waterlow & Sons Ltd.* [1915] 3 K.B. 527, 535.

(3) *Abrath* v. *North Eastern Rly. Co.* 11 Q.B.D. 440, 448; 11 App.Cas. 247.

(4) *Sutton* v. *Johnstone* (1785), 1 Term Rep. 493.

(5) *Hicks* v. *Faulkner* 8 Q.B.D. 167, 171.

(6) *Herniman* v. *Smith* [1938] A.C. 305, 316.

(7) *Croydon Corporation* v. *Croydon Rural District Council* [1908] 2 Ch. 321.

FEDERAL COURT.

M. Edgar for the appellant/defendant.

K. A. Menon for the respondent/plaintiff.

Cur. Adv. Vult.

Thomson L.P.: This is an appeal by the defendant in an action in which the plaintiff successfully sued for damages for malicious prosecution.

The facts of the case are by no means clear but would appear to be as follows.

The defendant and his brother were shareholders (the defendant has always said the only shareholders) in K. Ismail Ghaney Rawther & Co. Ltd., a limited liability company carrying on business in Kuala Lumpur. Differences arose between the brothers and in 1959 the defendant commenced proceedings which were opposed by his brother for the compulsory winding-up of the company. Then in January or February, 1960, the present plaintiff took steps to be joined as a party on the ground that he was a shareholder in the company and he opposed the petition.

On this the defendant took up the attitude that the plaintiff was not a shareholder and that a share certificate on which he relied was not genuine and on 6th February, 1960, he swore an affidavit and filed it in the winding-up proceedings. That affidavit has not been produced in evidence in the present proceedings and whether it contained any allegation of actual forgery it is impossible to say. The nature of some of its contents can be gathered from a counter affidavit sworn by the plaintiff on 12th February, 1960. That affidavit referred to the defendant's affidavit and went on:—

"It is untrue as stated in the said affidavit that (a) S. M. Abdul Kareem is not a shareholder of the company,